

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of : BAKER et al.  
Serial No. : 10/043,532  
Confirmation No. : 6232  
Filing Date : January 11, 2002  
Group Art Unit : 2618  
Examiner : Raymond S. Dean

**REPLY BRIEF  
On Appeal from Group Art Unit 2618**

Attn: Board of Patent Appeals and Interferences  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

In response to the Appeal Brief filed July 17, 2008, and the Examiner's Answer dated October 16, 2008, Appellant submits the following reply.

## **REMARKS**

This Reply Brief is in response to the Examiner's Answer dated October 16, 2008. Reconsideration of this application is respectfully requested in view of the following remarks and all of the arguments in the appeal brief of July 17, 2008 and prior responses.

## **STATUS OF CLAIMS**

- a) Claims 1-15, 19, 20, and 25-27 are pending.
- b) Claims 1-15, 19, 20, and 25-27 stand rejected and are the subject of this appeal.
- c) Claims 16-18 and 21-24 are cancelled.
- d) Claims 1, 6, 10 and 20 are independent.

## **VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

Whether claims 1-7, 10-15, 19, 20, 25-27 are properly rejected under 35 USC 103(a) as being obvious over US Published Application US 2002/0009061 (hereinafter "Willenegger") in view of US Patent 6,862,449 (hereinafter "Mohebbi").

Whether claims 8 and 9 are properly rejected under 35 USC 103(a) as being obvious over Willenegger, Mohebbi and further in view of US Patent 6,385,462 (hereinafter "Baum").

**ARGUMENT IN RESPONSE TO THE EXAMINER'S ANSWER**

Appellant respectfully responds to the Examiner's Answer below.

**A. Claims 1-7, 10-15, 19, 20, 25-27 are not properly rejected under 35 USC 103(a) as being obvious over Willenegger in view of Mohebbi.**

In the Examiner's Answer pages 14 and 15 two new references are cited as allegedly showing that the measurement of SIR is a part of a closed loop power control process. Appellant contends that even if Mohebbi uses a SIR measurement in soft handoff control, an SIR measurement, by itself, does not constitute a closed-loop power control means as described in the Examiner's newly cited references. Furthermore, the Examiner admits on page 15, lines 2-4 that the measurement is only a part of a closed loop power control process. There is no suggestion in any of the references that an SIR measurement constitutes a closed-loop power control means. Therefore, measuring SIR as taught by Mohebbi does not suggest to one skilled in the art Appellant's claimed closed-loop power control means being utilized to select a subset of primary stations greater than one primary station, selected from the plurality of primary stations, for the transmission of data over at least one data channel between the selected subset of primary stations and the secondary station.

Furthermore, none of these new references alleged as showing a conventional closed loop power control suggest the claimed feature of a closed-loop power control means being utilized to select a subset of primary stations greater than one primary station, selected from the plurality of primary stations, for the transmission of data over

at least one data channel between the selected subset of primary stations and the secondary station (emphasis added).

On page 14, the “Examiner agrees with Appellant that Mohebbi does not explicitly show that the SIR measurement is a closed loop power control means” (emphasis added). The Examiner further admits that an SIR measurement is only a part of a closed loop power control means as allegedly shown in the two new references. Therefore, it is clear from the Examiner’s own statements that none of the references teaches or suggests the claimed feature of “said closed-loop power control means being utilized to select a subset of primary stations greater than one primary station, selected from the plurality of primary stations, for the transmission of data over at least one data channel between the selected subset of primary stations and the secondary station.”

In addition, one skilled in the art would recognize from Mohebbi col. 17, lines 25-28 that after determining which BTS(s) are to be used a BTS selection message is sent to all the BTSs on a control channel. One skilled in the art would further recognize that the BTS message, in conjunction with the RSS and/or SIR measurement, taught by Mohebbi, is completely different from the alleged closed-loop power control process described in the new references cited by the Examiner.

The Examiner also agrees that the soft handoff control and closed-loop power control process are not equivalent (see Answer, page 15, line 11). Appellant agrees, none of the references show or suggest a closed-loop power control means as claimed by appellant. Even if Mohebbi uses a SIR measurement in soft handoff control, an SIR

measurement, by itself, does not constitute a closed-loop power control means as described in the newly cited references and as admitted by the Examiner.

For at least the foregoing reasons, it is respectfully submitted the Examiner's position is not supported by the combination of references, nor does the Examiner provide any evidence supporting this proposition that the references suggest that closed-loop power control can be utilized to select a subset of primary stations greater than one primary station, selected from the plurality of primary stations, for the transmission of data over at least one data channel between the selected subset of primary stations and the secondary station, thus the rejection should be reversed.

Appellant essentially repeats the above arguments for each of claims 2-10, 12-15, 19, 25-27, thus these rejections should be reversed.

**B. Claims 8 and 9 are not properly rejected under 35 USC 103(a) as being obvious over Willenegger in view Mohebbi and further in view of Baum.**

Claims 8 and 9 depend from claim 1 and includes all the features of claim 1, plus each dependent claim includes further distinguishing features. The Examiner does not provide any further comments on this rejection. Accordingly, Appellant essentially repeats the above arguments from claim 1 and respectfully submits that, for at least the foregoing reasons, claims 8 and 9 are not rendered obvious by the combination of references and the rejection should be reversed.

**CONCLUSION**

In light of the above, appellant respectfully submits that the rejection of claims 1-15, 19-20, and 25-27 is in error, legally and factually, and must be reversed.

Respectfully submitted,

Date: December 16, 2007

By: /Brian S. Myers/

Brian S. Myers

Attorney for Appellant

Reg. No. 46,947

For: Kevin C. Ecker,

Reg. No. 43,600

Please direct all future correspondence to:

Kevin C. Ecker, Esq.

Senior IP Counsel

Philips Intellectual Property & Standards

P.O. Box 3001

Briarcliff Manor, NY 10510-8001